

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Case No. CV 09-7935-DSF(RC)

Date: March 12, 2010

Title: Cristian Gallegos v. Larry Small, Warden

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DOCKET ENTRY

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HON. ROSALYN M. CHAPMAN, UNITED STATES MAGISTRATE JUDGE

Jake Yerke
Deputy Clerk

None
Court Reporter

ATTORNEYS PRESENT FOR PETITIONER:
None Present

ATTORNEYS PRESENT FOR RESPONDENT:
None Present

PROCEEDINGS: (IN CHAMBERS) ORDER TO SHOW CAUSE OR ANSWER SECOND
AMENDED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C.
§ 2254

IT IS HEREBY ORDERED:

1. The Clerk of the Court shall promptly serve a copy of the Second Amended Petition, Legal Memorandum of Points and Authorities, Legal Memorandum of State Procedure Defaults, this Order, and the Consent form on respondent by delivering them to the **Attorney General of the State of California**, as required by Rule 4, Rules Governing Section 2254 Cases in the United States District Courts, and upon **petitioner**. The parties **ARE ORDERED** to notify the Court, within sixty (60) days of this Order, of their decision by either filing the Consent or filing a document showing Non-Consent. The parties are advised that they are free to withhold consent without any adverse substantive consequences.

2. Respondent shall file and serve an **answer** to the Second Amended Petition within sixty (60) days after the filing date of this Order. The answer shall respond to the claims in the Second Amended Petition and, at a minimum, address the following: (a)

Whether petitioner is in respondent's custody; (b) the cause of petitioner's detention (e.g., pretrial or post-conviction detention, type of judgment, court name and case no.), and indicate what transcripts, if any, are available and when they can be furnished; and (c) whether respondent concedes that the Second Amended Petition should be granted. Further, the answer shall clearly address whether any claim in the Second Amended Petition is barred by a failure to exhaust either administrative remedies or state court remedies, a procedural bar, non-retroactivity or a statute of limitations; however, if respondent raises any of the foregoing defenses, he or she may, instead of filing an answer, file a **motion to dismiss**.

3. At the time the answer is filed, respondent **shall lodge** with the Clerk all transcripts, any brief submitted by petitioner in the appellate court or in a post-conviction proceeding, any brief submitted by the prosecution in the appellate court, the opinions and dispositive orders of the appellate court, and any other relevant documents. However, in the event a motion to dismiss is filed instead of an answer, respondent need not lodge the reporter's transcripts, but **shall lodge** with the Clerk all clerk's transcripts, any brief submitted by petitioner in the appellate court or in a post-conviction proceeding, any brief submitted by the prosecution in the appellate court, the opinions and dispositive orders of the appellate court, and any other relevant documents.

4. If petitioner desires to file a **reply** to the answer or motion to dismiss, he shall do so within sixty (60) days of the date the answer or motion to dismiss is served. The reply shall set forth, separately: (a) Petitioner's admission or denial of each factual allegation in the answer; (b) additional facts or legal argument responsive to matters raised in the answer; and (c) shall not raise new grounds for relief not asserted in the Second Amended Petition.

5. Unless the Court orders otherwise, the case will be deemed **submitted** on the records thirty (30) days after the reply is filed or, in the event no reply is filed, thirty (30) days after the answer or motion to dismiss is filed.

Service List:

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#F-75485
Calipatria State Prison
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Attorney General
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Initials of Deputy Clerk hr
for jy